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265 NLRB No. 115

D--9554
Baltimore, MD

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

NATIONAL POSTERS, INC. AND NATIONAL
LITHO, A DIVISION OF NATIONAL
POSTERS, INC.

and

Case 5--CA--14585

BALTIMORE PRINTING PRESSMEN AND
ASSISTANTS UNION #61

DECISION AND ORDER

Upon a charge filed on August 6, 1982, by Baltimore Printing Pressmen and Assistants Union #61, herein called the Union, and duly served on National Posters, Inc. and National Litho, A Division of National Posters, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 5, issued a complaint on August 31, 1982, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

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With respect to the unfair labor practices, the complaint alleges in substance that on July 14, 1982, following a Board election in Case 5--RC--11680¹, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate; and that, commencing on or about August 3, 1982, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On August 26, 1982, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On October 12, 1982, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on October 18, 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed an opposition to the Motion for Summary Judgment.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations

¹ Official notice is taken of the record in the representation proceeding, Case 5--RC--11680, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See LTV Electrosystems, Inc., 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); Golden Age Beverage Co., 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); Intertype Co. v. Penello, 269 F.Supp. 573 (D.C.Va. 1967); Follett Corp., 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the complaint and opposition to the General Counsel's Motion for Summary Judgment, Respondent admits that the Union was certified, that it received a request to bargain, and that it has refused to bargain, but denies that it has violated Section 8(a)(5) of the Act. Specifically, Respondent maintains that it has no obligation to bargain with the Union because the underlying certification of the Union was improperly issued inasmuch as the results of the election in Case 5--RC--11680 are invalid as a matter of law.

Review of the record herein, including the record in Case 5--RC--11680, reveals that, pursuant to a Stipulation for Certification Upon Consent Election, an election was conducted on December 15, 1981. The tally showed 24 votes for and 21 votes against the Union, with 4 challenged ballots. The Employer (and Petitioner) thereafter filed objections to conduct affecting the results of the election, as well as statements of position concerning the challenged ballots. Following an investigation, the Regional Director for Region 5, on March 16, 1982, issued a Report on Challenges and Objections in which he recommended that the Employer's objections be overruled, and that two challenged ballots be opened and counted. On March 31, 1982, the Employer filed exceptions to the report with the Board. Thereafter, on

June 29, the Board issued a "Decision, Direction To Open and Count Certain Challenged Ballots, Contingent Direction of Hearing," in which it directed that the two challenged ballots be opened and that, if the two remaining challenged ballots were no longer determinative, the Regional Director issue a certification of representative. The Board further directed that, if the revised tally indicated that the two challenged ballots were determinative, that a hearing be held with respect to those challenged ballots, as well as with respect to Petitioner's Objection 1. The two challenged ballots were opened and counted, with the revised tally showing 25 valid votes for and 22 against the Union, thereby making the remaining 2 challenged ballots nondeterminative. On July 14, 1982, the Regional Director issued a Certification of Representative.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.²

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation

² See Pittsburgh Plate Glass Co. v. N.L.R.B., 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

Findings of Fact

I. The Business of Respondent

National Posters, Inc. and National Litho, A Division of National Posters, Inc., is a Maryland corporation engaged in the business of printing and sign creation at its 800 Debelius Avenue and 4206 Shannon Drive, Baltimore, Maryland, locations. During the past 12 months, a representative period, the Respondent purchased and received goods valued in excess of \$50,000 directly from points located outside the State of Maryland.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. The Labor Organization Involved

Baltimore Printing Pressmen and Assistants Union #61 is a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

A. The Representation Proceeding

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All production and maintenance employees including truck drivers, employed by the Employer at its 800 Debelius Avenue and 4206 Shannon Drive, Baltimore, Maryland locations; but excluding all office clerical employees, guards and supervisors as defined in the Act.

2. The certification

On December 15, 1981, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 5, designated the Union as their representative for the purpose of collective-bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on July 14, 1982, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. The Request To Bargain and Respondent's Refusal

Commencing on or about July 27, 1982, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about August 3, 1982, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the

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All production and maintenance employees including truck drivers, employed by the Employer at its 800 Debelius Avenue and 4206 Shannon Drive, Baltimore, Maryland locations; but excluding all office clerical employees, guards and supervisors as defined in the Act.

2. The certification

On December 15, 1981, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 5, designated the Union as their representative for the purpose of collective-bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on July 14, 1982, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. The Request To Bargain and Respondent's Refusal

Commencing on or about July 27, 1982, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about August 3, 1982, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the

exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since August 3, 1982, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the

initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See Mar-Jac Poultry Company, Inc., 136 NLRB 785 (1962); Commerce Company d/b/a Lamar Hotel, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; Burnett Construction Company, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

Conclusions of Law

1. National Posters, Inc. and National Litho, A Division of National Posters, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Baltimore Printing Pressmen and Assistants Union #61 is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees including truck drivers, employed by the Respondent at its 800 Debelius Avenue and 4206 Shannon Drive, Baltimore, Maryland locations; but excluding all office clerical employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since July 14, 1982, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose

of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about August 3, 1982, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, National Posters, Inc. and National Litho, A Division of National Posters, Inc., Baltimore, Maryland, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Baltimore Printing Pressmen and Assistants Union #61 as the

of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about August 3, 1982, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, National Posters, Inc. and National Litho, A Division of National Posters, Inc., Baltimore, Maryland, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Baltimore Printing Pressmen and Assistants Union #61 as the

exclusive bargaining representative of its employees in the following appropriate unit:

All production and maintenance employees including truck drivers, employed by the Employer at its 800 Debelius Avenue and 4206 Shannon Drive, Baltimore, Maryland locations; but excluding all office clerical employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its facilities at 800 Debelius Avenue and 4206 Shannon Drive, Baltimore, Maryland, copies of the attached notice marked "'Appendix.'"³ Copies of said notice, on forms provided by the Regional Director for Region 5, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60

³ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 5, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

Dated, Washington, D.C.

December 10, 1982

John H. Fanning, Member

Howard Jenkins, Jr., Member

Don A. Zimmerman, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Baltimore Printing Pressmen and Assistants Union #61 as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All production and maintenance employees including truck drivers, employed by the Employer at its 800 Debelius Avenue and 4206 Shannon Drive, Baltimore, Maryland locations; but excluding all office clerical employees, guards and supervisors as defined in the Act.

NATIONAL POSTERS, INC. AND
NATIONAL LITHO, A DIVISION
OF NATIONAL POSTERS, INC.

(Employer)

Dated ----- By -----
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Candler Building, 109 Market Place, Suite 4200, Baltimore, Maryland 21202, Telephone 301--962--2772.